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6 **IN THE UNITED STATES DISTRICT COURT**
 7 **FOR THE DISTRICT OF ARIZONA**

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9 Ana Ramirez,

No. CV-22-01151-PHX-JAT

10 Plaintiff,

ORDER

11 v.

12 Commissioner of Social Security
 13 Administration,

14 Defendant.

15 Pending before the Court is the parties' stipulation to an award of attorneys' fees
 16 under the Equal Access to Justice Act ("EAJA"). (Doc. 28).

17 "A litigant is entitled to attorneys' fees under the EAJA if: '(1) he is the
 18 prevailing party; (2) the government fails to show that its position was
 19 substantially justified or that special circumstances make an award unjust;
 20 and (3) the requested fees and costs are reasonable.' *Carbonell v. I.N.S.*, 429
 21 F.3d 894, 898 (9th Cir. 2005) (citing *Perez-Arellano v. Smith*, 279 F.3d 791,
 22 793 (9th Cir. 2002)); see also 28 U.S.C. § 2412(d)(1)(A)."

23 *Michele M. v. Saul*, No. 19-CV-00272-JLB, 2020 WL 5203375, at *1 (S.D. Cal. Sept. 1,
 24 2020). The Court will consider these three prongs in turn.

25 The parties' discussion regarding Plaintiff's entitlement to fees under the EAJA is:
 26 "This stipulation constitutes a compromise settlement of Plaintiff's request for EAJA fees
 27 and does not constitute an admission of liability on the part of Defendant under the EAJA
 28 or otherwise." (Doc. 28 at 2). In other words, the stipulation does not discuss the applicable
 29 prongs under the EAJA.

30 Regarding prong one, the Ninth Circuit Court of Appeals reversed the decision of

1 the Commissioner. (Doc. 25). Accordingly, the Court finds that Plaintiff is the prevailing
 2 party.

3 Regarding prong two, the Ninth Circuit Court of Appeals has explained:

4 Pursuant to the EAJA, we are required to award [Plaintiff] fees and other
 5 expenses incurred in connection with his civil action unless we find that the
 6 position of the United States was “substantially justified” or that special
 7 circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A).

8 The test for determining whether the Secretary’s position was substantially
 9 justified under the EAJA is whether the position had a reasonable basis in
 10 both law and fact—that is, whether it was justified “to a degree that could
 11 satisfy a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 565
 12 (1988); *see also Barry v. Bowen*, 825 F.2d 1324, 1330 (9th Cir. 1987). The
 13 burden is on the Secretary to prove that his position was substantially
 14 justified. *Id.*

15 *Russell v. Sullivan*, 930 F.2d 1443, 1445 (9th Cir. 1991).

16 The Government’s stipulation to pay fees, while simultaneously not admitting it
 17 owes the fees, is an ambiguous legal position. This Court previously affirmed the decision
 18 of the Commissioner; thus, the Court might be inclined to find that the Commissioner’s
 19 position was substantially justified. However, applying the test articulated in *Russell*, the
 20 Court finds that the Government has failed to carry its burden to prove that its position was
 21 substantially justified or that special circumstances make an award unjust. *Russell*, 930
 22 F.2d at 1445; *see also Michele M.*, 2020 WL 5203375, at *1.

23 Regarding prong three, the Court should award only reasonable fees. The Court has
 24 reviewed the billing statement (Doc. 28-1) and finds the hours expended and the rate
 25 charged to be reasonable.

26 Plaintiff has signed an assignment of any award of EAJA fees to her counsel. (Doc.
 27 28-3). This assignment will be addressed below.

28 Based on the foregoing,

IT IS ORDERED granting the stipulation (Doc. 28) such that fees and expenses in
 29 the amount of \$10,852.08 as authorized by 28 U.S.C. § 2412, and costs in the amount of
 30 \$0 as authorized by 28 U.S.C. § 1920, are awarded to Plaintiff subject to the terms of the
 31 Stipulation.

1 **IT IS FURTHER ORDERED** that if, after receiving this Order, the Commissioner:
2 (1) determines that Plaintiff does not owe a debt that is subject to offset under the Treasury
3 Offset Program, and (2) agrees to waive the requirements of the Anti-Assignment Act, then
4 the fees awarded herein will be paid to Plaintiff's attorney pursuant to the assignment
5 executed by Plaintiff. However, if there is a debt owed under the Treasury Offset Program,
6 the Commissioner cannot agree to waive the requirements of the Anti-Assignment Act, and
7 any remaining Equal Access to Justice Act fees after offset will be paid by check to Plaintiff
8 but delivered to Plaintiff's attorney.¹

Dated this 21st day of February, 2025.



James A. Teilborg
Senior United States District Judge

²⁸ ¹ This award is without prejudice to Plaintiff seeking attorneys' fees under section 206(b) of the Social Security Act, 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA.